

Docket No.: N0469.70022US02
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Poh K. Hui et al.
Application No.: 10/667,931
Confirmation No.: 1625
Filed: September 22, 2003
For: PREPARATION OF A LIPID BLEND AND A PHOSPHOLIPID
SUSPENSION CONTAINING THE LIPID BLEND
Examiner: G. S. Kishore
Art Unit: 1612

Certificate of Electronic Filing Under 37 CFR 1.8

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being transmitted via the Office electronic filing system in accordance with 37 CFR § 1.6(a)(4).

Dated: October 13, 2011

Electronic Signature for Michelle M. Quinn: /Michelle M. Quinn/

APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. §1.705

Mail Stop Issue Fee
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

In accordance with 37 CFR §1.705(b), Applicant requests reconsideration of the patent term adjustment (“PTA”) for U.S. Application No. 10/667931 (“the ‘931 Application”). Applicant provides, below, a statement of the facts involved, specifying the correct PTA and the bases under 37 CFR §1.702 for the adjustment, the relevant dates for which adjustment is sought, and the adjustment to which the patent is entitled as can be determined at this time.

1. On August 29, 2011, the U.S. Patent and Trademark Office (“USPTO”) mailed a Notice of Allowance and Determination of Patent Term Adjustment for the ‘931 Application, which indicated that the ‘931 Application was entitled to a PTA of 168 days.

2. According to the Patent Term Adjustments page of the Patent Application Information Retrieval (PAIR) system, the USPTO accorded the ‘931 Application a PTA of 697 days for delays that occurred at the USPTO, but reduced the PTA to 168 days because Applicant had allegedly incurred 529 days of delay.

11/21/2011 CKHLOK 00000031 232025 10667931
01 FC:1455 200.00 DA

3. Applicant submits that the PTA, as it can be determined at this time, may be 93 days.
4. The difference between Applicant's PTA calculation (93 days) and the USPTO's PTA calculation (168 days) results from the submission of a series of Information Disclosure Statements on February 22 2010, August 15 2011 and August 24 2011. If considered to be supplemental replies, these submissions may result in Applicant delay of 75 days (periods from (a) February 16 2010 to February 22 2010, (b) June 16 2011 to August 15 2011, and (c) June 16 2011 to August 24 2011). *See* 37 CFR § 1.704(c)(8). The latter two time periods, combined, may account for only 69 days of Applicant delay given the overlap in those time periods. No days of Applicant delay were included on the PTA page of PAIR with respect to these submissions.
5. Applicant reserves the right to request a further review of PTA upon issuance of the '931 Application, including for example review based on the USPTO's failure to issue the '931 Application within three years of its actual filing date (i.e., by September 22, 2006). *See* 35 U.S.C. § 154(b)(1)(B). For the record, Applicant notes that it filed a Request for Continued Examination (RCE) on September 11 2008. *See* 35 U.S.C. § 154(b)(B)(i). The period of USPTO delay thus began on the first day following the three year period, September 23 2006, and ended on September 10 2008. The USPTO has not included this delay in its calculation of the PTA shown in the PAIR system or in the Notice of Allowance. It is Applicant's understanding that the USPTO calculates such delays once a patent issues and that the USPTO considers requests for review of PTA, based on the three year pendency rule, to be premature if such requests are filed prior to the issuance of the patent. If this understanding is incorrect, Applicant further requests review of PTA as it relates to the three year pendency rule.
6. A terminal disclaimer was not filed in the '931 Application and the '931 Application is not subject to a terminal disclaimer.

Conclusion

Based on the foregoing, Applicant respectfully requests review of the PTA as indicated on the Notice of Allowance and Determination of Patent Term Adjustment in accordance with the foregoing.

Applicant submits \$200.00, which is the fee set forth in 37 CFR § 1.18(e) for filing an application for PTA. If there is any additional fee occasioned by this application and request that is not covered by the enclosed fee, please charge any deficiency to Deposit Account No. 23/2825.

Respectfully submitted,

/Maria A. Trevisan/_____
Maria A. Trevisan
Registration No.: 48,207
WOLF, GREENFIELD & SACKS, P.C.
600 Atlantic Avenue
Boston, Massachusetts 02210-2206
617.646.8000

October 13, 2011